92-712

Supreme Court, U.S.
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No. 92-~~172~~

In The

Supreme Court of the United States

October Term, 1992

DAVID G. STAUFFACHER and JOHN P. STAUFFACHER,

Petitioners,

v.

JOHN A. BENNETT and FIRST HERITAGE SAVINGS CREDIT UNION,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF IN RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Respondents First Heritage Savings Credit Union ("First Heritage") and John Alexander Bennett ("Bennett") object to both the form and substance of the "Questions Presented" in pp. i-vi of the Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit ("Petition") and believe the issue should be stated as follows:

> Did the Seventh Circuit err in concluding that the United States District Court for the Western District of Wisconsin could not exercise personal jurisdiction over First Heritage and Bennett?

PARTIES

Respondents First Heritage and Bennett do not object to the "List of Parties" at p. vii of the Petition.

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JURISDICTIONAL STATEMENT

Respondents First Heritage and Bennett do not object to the jurisdiction of this Court under 28 U.S.C. § 1254(1), but do not accept the characterization of the jurisdiction of the lower courts as set forth at pp. 2-6 of the Petition.

STATUTES INVOLVED

For purposes of responding to the Petition, First Heritage and Bennett do not dispute that the statutes listed at p. 7 of the Petition relate to the arguments set forth in the Petition. First Heritage and Bennett do not, however, concede the applicability of these statutes to the issues properly before this Court or accept the characterizations of those statutes in the Petition.

STATEMENT OF THE CASE

First Heritage and Bennett object to the Statement of the Case at pp. 7-28 of the Petition on grounds that it is not "concise" as required by Sup. Ct. R. 14(g) and contains "facts" that are not supported by the record and which are contrary to the facts found by the courts below. First Heritage and Bennett further object that the Statement of the Case in the Petition contains pages of material that are not relevant to the questions of personal jurisdiction that are at issue. The following is a more concise and accurate statement of the case:

Petitioners David G. Stauffacher and John P. Stauffacher ("Stauffachers") filed an action in the United

States District Court for the Western District of Wisconsin to recover damages allegedly suffered as the result of their investment in two Canadian joint ventures involving gold-mine leases. (Petition at 7-8) Among the defendants named were First Heritage, a Canadian credit union with a branch facility in Hope, British Columbia, Canada and Bennett, the branch manager of First Heritage's Hope branch. (*Id.*) The Stauffachers' investment involved two joint venture agreements with Donald Dolan in which some of the invested money was deposited at First Heritage. (*Id.* at 8-9) As part of a trust arrangement, Bennett agreed to hold title to the gold-mine leases as a trustee. (*Id.* at 15, 24-25)

Neither First Heritage, nor Bennett, conducted any activity within the State of Wisconsin. (*Id.* at 3a-4a, 16a-17a) Bennett made one or two phone calls into Wisconsin to speak with the Stauffachers, but neither call involved solicitation. (*Id.*) Bennett may also have mailed documents to Stauffachers in Wisconsin but no such documents involved solicitation. (*Id.*)

Bennett had no other contacts with Wisconsin or the United States. (*Id.*; *id.* at 9a) First Heritage had no other contact except receipt of deposits from several State of Washington residents, just over the Canadian border. (*Id.* at 9a) The number of depositors and the amount deposited was not set forth in the record. (*Id.*) After considering affidavits and proofs submitted on the issue, the United States District Court for the Western District of Wisconsin dismissed the Stauffachers' action against Bennett and First Heritage because of a lack of personal jurisdiction over them. (*Id.* at 11a-32a) In dismissing this action, the District Court made specific findings of fact, resolving all

inferences and disputes of fact in favor of the Stauffachers, and concluded that it could not exercise personal jurisdiction over these defendants. (*Id.* at 13a-18a) On appeal, the Seventh Circuit affirmed the District Court. (*Id.* at 1a-10a)

The Seventh Circuit first set forth the relevant facts and then discussed whether Wisconsin's long-arm statute would allow personal jurisdiction to be exercised. (*Id.* at 1a-2a) It concluded that the contacts with Wisconsin did not satisfy the requirement of "substantial and not isolated activities within this state" as required by Wis. Stat. § 801.05(1)(d). (Petition at 2a) It then concluded that there had been no solicitation within Wisconsin as required by Wis. Stat. § 801.05(4)(a). (Petition at 4a) Finally, it stated, "there are other provisions of the long-arm statute but none remotely applicable." (*Id.* at 4a)

The Seventh Circuit followed its holding with a rejection of various arguments made by Stauffachers to enhance the extent of First Heritage's and Bennett's contacts with Wisconsin. The court held that a "consent to jurisdiction" clause was inapplicable because First Heritage and Bennett were not parties to the agreement which contained it. (*Id.* at 5a) It also rejected Stauffachers argument that the contacts of certain alleged coconspirators could be attributed to First Heritage and Bennett, noting that no conspiracy had been established and that, if it had, there were no allegations that anyone with contact with Wisconsin was an agent of the conspiracy. (*Id.* at 7a-8a)

Finally, the court concluded that the international service provisions of federal securities law would not

authorize personal jurisdiction because the "totality of First Heritage's U.S. contacts is too scarce to bring it within the grasp of the U.S. courts". (*Id.* at 9a)

SUMMARY OF ARGUMENT

The Petition should be denied because it seeks review of state law issues resolved by the lower courts and because it argues legal issues based on a set of facts not supported by the record or found by the lower courts. Certiorari is not the proper vehicle for review of either state law or factual issues.

INTRODUCTION

Respondents Bennett and First Heritage, by their attorneys Michael, Best & Friedrich by James R. Troupis and Steven P. Means, submit the following arguments and authorities in response to the Petition submitted by Stauffachers.

Before the Seventh Circuit, Stauffachers stated the relevant issue as follows:

> Does the trial court in the Western District of Wisconsin have personal jurisdiction under the factual circumstances of this case, over Canadian Defendants First Heritage Savings Credit Union and John Alexander Bennett?

(Brief of Plaintiffs-Appellants, at 1) In their Petition, this single, straight-forward issue has ballooned to a six page statement of issues with nearly twenty subparts. (Petition

at i-vi) However, distilled to their essence, the multiple issues raised by Stauffachers come down to a garden-variety question of personal jurisdiction over foreign defendants.

As with any jurisdictional issue a two level analysis is required. *Giotis v. Apollo of the Ozarks, Inc.*, 800 F.2d 660, 665 (7th Cir. 1986), *cert. denied*, 479 U.S. 1092 (1987). The first level is whether there is a statutory basis for jurisdiction. Here, Stauffachers have relied on the Wisconsin long-arm statute, Wis. Stat. § 801.05, and Federal Securities law to meet the first test. Assuming one meets the first level requirement, the second level of analysis is a determination whether due process will allow jurisdiction to be exercised in a particular case. Both the District Court and the Seventh Circuit Court of Appeals rejected the Stauffachers' jurisdictional arguments and this Brief in Response to Petition for Writ of Certiorari ("Response") discusses the basis for that conclusion.

DISCUSSION

The Petition is a paradigm of confusion. As a result, in responding to the Petition, First Heritage and Bennett have attempted to identify the issues being raised and respond to them accordingly, following the outline of the Seventh Circuit's opinion.

The organizational confusion arises because Stauffachers do not address the legal issue of personal jurisdiction under the facts as found by both the District Court and Seventh Circuit. Rather, Stauffachers continue

to argue a different version of the facts – a version which has already been rejected by the two courts.

I. THE SEVENTH CIRCUIT DECIDED THE CASE UNDER STATE LAW – NOT DUE PROCESS

Stauffacher's Petition argues this case as if it involved issues of due process. However, the due process issue was not addressed by the Seventh Circuit with respect to the state law claims because no statutory (long-arm) basis for jurisdiction was found. (Petition at 2a) Because both the District and Appellate courts concluded that the Wisconsin long-arm statute did not allow personal jurisdiction, they did not address the due process issues, except by analogy.

The rules of this Court limit certiorari review to cases where there are "special and important reasons therefor." Sup. Ct. R. 10. Here, the issue of the reach of Wisconsin's long-arm statute is a pure question of state law. *See Bishop v. Wood*, 426 U.S. 341, 346 (1976) ("[T]his Court has accepted the interpretation of state law in which the District Court and the Court of Appeals have concurred even if an examination of the state-law issue without such guidance might have justified a different conclusion."). In *Bishop*, this court recognized that when both a United States District Court familiar with a state's laws and a United States Court of Appeals agree on an interpretation of state law, independent examination of the state law issue by the Supreme Court is foreclosed. Because the dismissal below was affirmed on Stauffacher's failure to demonstrate Wisconsin's long-arm jurisdiction, certiorari should be denied.

II. DUE PROCESS WOULD NOT ALLOW THE DISTRICT COURT TO EXERCISE PERSONAL JURISDICTION.

Although the Seventh Circuit, for the most part, steered clear of the due process issue, Stauffachers now make due process a focus of the Petition.

Due process protects a party from being sued in a forum unless the party has sufficient, meaningful "contacts, ties, or relations" with that forum. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 471-72 (1985) (citing *International Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945)). A defendant must have certain minimum contacts with the forum such that maintenance of the suit does not offend traditional notions of fair play and substantial justice. *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). A defendant's conduct within the forum state should be such that he could reasonably anticipate being hailed into court there. *World-Wide Volkswagon Corp. v. Woodson*, 444 U.S. 286, 297 (1980).

Although the Petition suggests that this long-accepted minimum contacts analysis should be abandoned in favor of an expanded construction of due process (Petition at 29), that suggestion is never followed up and the arguments made, in fact, are based almost exclusively on the continuing viability of the minimum contacts standard. Thus, it is the minimum contacts standard as it has evolved through this Court's precedents that should control the issues in this case.

A. Neither First Heritage Nor Bennett Had Minimum Contacts With Wisconsin Sufficient To Meet Either Constitutional Due Process Or State Law.

The Memorandum and Order of the District Court makes extensive and specific findings of fact based on the written proofs it received on the personal jurisdiction issue. (Petition at 13a-18a) Because the court received proofs, it was not obligated to rely on the allegations of the complaint where those allegations were contradicted. *Turnock v. Cope*, 816 F.2d 332, 333 (7th Cir. 1987). Of course, the "facts" under which the Seventh Circuit decided the jurisdictional issue were the same as found by the District Court, although the Seventh Circuit also responded to some of the additional facts raised by Stauffachers.[1]

The case at bar involves a question of "special" rather than "general" jurisdiction, as the contacts urged by the Petition relate directly to the cause of action. *See Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408, 414 (1984). Therefore, the jurisdictional issue turns

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[1] It does not appear that Stauffachers ever appealed from the District Court's findings of fact. The notice of appeal referenced only the portion of final judgment dismissing First Heritage and Bennett and the Appellant's Brief referred to whether jurisdiction existed "under the factual circumstances of this case." The Statement of Facts in the Appellant's Brief merely repeated the fact arguments made to the District Court without addressing the finding that those arguments were rejected. Moreover, Stauffachers argued that the Seventh Circuit had *de novo* review on appeal – a standard that is not applicable to findings of fact.

on the relationship of defendants Bennett and First Heritage with Wisconsin and the litigation. *Id.* (citing *Shaffer v. Heitner,* 433 U.S. 186 (1977)). In the guiding precedent, *Burger King Corp. v. Rudzewicz,* 471 U.S. 462 (1985), a Florida franchisor sued a Michigan franchisee, in Florida, for breach of the franchise agreement. *Id.* at 464. In upholding the exercise of personal jurisdiction, this Court clarified and restated the guidelines for resolving issues of personal jurisdiction over nonresident defendants:

> [T]he constitutional touchstone remains whether the defendant purposefully established "minimum contacts" in the forum State. *International Shoe Co. v Washington, supra,* at 316, 90 L. Ed. 95, 66 S. Ct. 154, 161 ALR 1057. Although it has been argued that foreseeability of causing injury in another State should be sufficient to establish such contacts there when policy considerations so require, the Court has consistently held that this kind of foreseeability is not a "sufficient benchmark" for exercising personal jurisdiction. *World-Wide Volkswagen Corp. v Woodson,* 444 US, at 295, 62 L. Ed. 2d 490, 100 S. Ct. 559. Instead, "the foreseeability that is critical to due process analysis . . . is that the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there." *Id.,* at 297, 62 L. Ed. 2d 490, 100 S Ct 559.

Id. at 474. In so holding, this Court emphasized that it is the defendant's contacts with the forum that are relevant – not the plaintiff's. *Id.* at 474-75.

The facts of this case, as stated by the Seventh Circuit, clearly take it beyond the *Burger King* jurisdictional parameters. The only "contacts" with Wisconsin involved

the mailing of documents and one or two phone calls, none of which involved any solicitation. (Petition at 3a-4a) These "contacts" were characterized by the court as "occasional, unspecified and seemingly trivial." (*Id.* at 3a) The District Court found likewise:

> It is undisputed that First Heritage has no offices or employees in Wisconsin. It is also undisputed that Bennett has never been in the State of Wisconsin. The transaction giving rise to the dispute involves investments in mining ventures in Canada. The situs of the property that is the subject of the dispute is in Canada. Bennett's role in the venture was as trustee. His duties as trustee were to be performed in Canada. . . . The trust/escrow agreement and a subsequent document entitled the Lease Record Title Transfer were executed by Bennett in Canada, although D. Stauffacher did execute his portion of the lease title transfer document in Madison, Wisconsin.
>
> . . . Bennett placed one phone call to the plaintiff, D. Stauffacher. (There is some indication that Bennett may have placed two calls but the substance of only one call is known.) The substance of the call was Bennett's request that he be allowed to withdraw from the trust arrangement. Bennett mailed or caused to be sent various documents to the plaintiffs.

(*Id.* at 16a-18a)

Clearly, Due Process would have compelled both the District Court and the Seventh Circuit to dismiss this case on the facts found. Stauffachers cannot – and don't – dispute this. Their tact is to argue new and different facts

and to argue the legal issue of personal jurisdiction only under their alternate scenario.

B. Stauffachers' Hypothetical Arguments Rely On Unestablished Factual Assertions, And Must Be Rejected As A Basis For Jurisdiction.

The issues argued in the Petition all involve "facts" that fall outside the findings of the two lower courts. Review of these issues by writ of certiorari would be improper because the "facts" argued by Stauffachers are not supported by the record. Rather, they are speculative arguments and characterizations that were not supported by proofs submitted to the District Court and are clearly refuted by the record below.[2]

1. First Heritage and Bennett did not Consent to Jurisdiction.

The Petition argues that the Seventh Circuit should have upheld personal jurisdiction based upon a "consent to jurisdiction" clause in a contract. The Seventh Circuit, however, expressly noted that "First Heritage and Bennett are not parties" to this contract. (Petition at 5a) Stauffachers do not dispute this. Rather, they argue that the consent to jurisdiction clause was later "ratified" or

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[2] In the interest of clarity and brevity, Bennett and First Heritage will only discuss some of the main issues in detail. This should not be construed as a waiver of any other objections to misstatements and misunderstandings in the Petition for Writ of Certiorari.

"approved" by Bennett and First Heritage and that Bennett and First Heritage are therefore bound by it.

This ratification argument is based on a series of written contracts. Stauffachers invested in two separate gold-mine mineral leases with Don Dolan ("Dolan"). There was a separate joint venture agreement for each lease. (Complaint, Exh. 1,3) The first such agreement allegedly contained a consent to jurisdiction clause. (*Id.*, Exh. 1) Bennett and First Heritage were not parties to these agreements. (*Id.*, Exh. 1,3) A separate trust agreement was then entered into in British Columbia between Dolan, Stauffachers and defendant Bennett under which Bennett was to hold title to the first mineral lease as trustee. (*Id.*, Exh. 2) No consent to jurisdiction clause appeared in this first trust agreement. (*Id.*)

The second joint venture agreement was to be supplemented by the terms of the first joint venture agreement and further stated that, at Bennett's election, it could serve as the trust agreement for the second mineral lease. (*Id.*, Exh. 3, ¶ 4D) Instead, Bennett became a party to a "lease record title transfer agreement" (*Id.*, Exh. 4), under which he agreed to hold title to the second mineral lease as Trustee. Again, there was no consent to jurisdiction clause in any of these documents.

Both the District Court and the Seventh Circuit Court of Appeals rejected the notion that these contracts resulted in a waiver of Bennett's and First Heritage's personal jurisdiction defense. The District Court stated:

> Concerning the choice of law provision found in the first investment contract the Court is of the opinion that Bennett and First Heritage are not bound by that provision because they

> were not parties to that agreement and accordingly could not have "availed themselves of the law of the forum."

(Petition at 26a) The Seventh Circuit likewise stated:

> For the same reason the Stauffachers cannot prevail by reference to the forum selection clause in the [first] investment contract. It is true that the provision is broadly worded. . . . And such clauses are enforceable. But the only remaining defendants, First Heritage and Bennett, are not parties to the agreement.

(*Id.* at 4a-5a) (citations omitted). Despite the dual rejection of this bizarre theory, Stauffachers persist in arguing that there was a consent to jurisdiction clause applicable to Bennett and First Heritage.

To reach the legal issue of whether such ratification will create jurisdiction, this Court must first reverse the lower courts' factual conclusion that Bennett and First Heritage did not ratify or approve the consent to jurisdiction clause and then decide if such ratification was sufficient to create jurisdiction under state law (an issue not addressed below). However, this Court has made it clear that a writ of certiorari will not be issued to review factual determinations. *See Branti v. Finkel*, 445 U.S. 507, 512 n. 6 (1980) (absent the most exceptional circumstances, factual determinations in which the District Court and Court of Appeals have concurred will not be reviewed by the Supreme Court). In addition, as noted above, the Court will not accept a certiorari request to rule on state law issues. Finally, even if this Court were inclined to review the factual determinations of the two

lower courts, the documents themselves refute Stauffachers' claim of ratification or approval.

Assuming that ratification of the consent to jurisdiction clause was found, that ratification could carry no more weight than an actual agreement to that effect. In *Burger King*, this court expressly addressed the significance of a similar provision addressing choice of law and concluded that it was only one of many factors to consider in determining the jurisdictional issue. 471 U.S. at 482. Thus, the issue is not one that needs to be addressed by this Court on certiorari.

2. Stauffachers Did Not Establish a Factual Basis For a Conspiracy.

As a backstop argument, the Stauffachers argue that if First Heritage and Bennett do not themselves have sufficient contacts with Wisconsin, the alleged acts of agents and co-conspirators may be attributed to them in order to support the exercise of personal jurisdiction. Stauffachers have even alleged that their own acts can be attributed to First Heritage and Bennett:

> The requirement of a defendant's "purposeful availment of the benefits and protections of the laws of the forum state", *Burger King v. Rudzewicz*, 471 U.S. 462, 475 (1985) can also be satisfied by the activities of *plaintiff* within the state, if the activities are subsequently ratified by the defendant and do, in fact, benefit the enterprise and conspiracy to which defendants are alleged to belong.

(Petition at 35) Again, the Petition is woefully inadequate.

The question of whether an agent's or co-conspirator's acts may be attributed to a defendant for purposes of creating jurisdiction is only relevant if an agency relationship or conspiracy has been established. The Seventh Circuit concluded that, under the law of Wisconsin, Stauffachers have not done this. It stated:

> All of this leaves out of account, however, the possibility that [co-defendant] Livesey might be deemed an agent of First Heritage; and we may assume without having to decide that his two visits to Wisconsin on promotional missions related to the gold mining venture were enough to satisfy the requirement of "solicitation" in the subsection just quoted. The problem is that although the plaintiffs continue to argue that Livesey was First Heritage's agent, he was Dolan's agent. His activities may have sufficed to make Dolan suable in Wisconsin – though the question is academic, since Dolan brought himself directly within that jurisdiction by his visits – but Dolan is not First Heritage.

(Petition at 4a)

In addition to arguing that Livesey was the agent of First Heritage and Bennett, Stauffachers attempted to argue that Livesey was part of a conspiracy or RICO enterprise with Bennett and First Heritage. The Seventh Circuit Court of Appeals refused to consider this issue because it had not been raised in the District Court:

> The problem goes deeper than a failure to make a preliminary evidentiary showing. While alleging a broad conspiracy, the Stauffachers have never claimed that Livesey was an agent of the conspiracy. . . . When one of the judges suggested this theory to the plaintiff's counsel at

> argument he naturally embraced it with alacrity and even asked for permission to file a supplementary brief elaborating it. But the time for that was in the district court, and had passed.

(*Id.* at 8a). As the Seventh Circuit concluded:

> The cases are unanimous that a bare allegation of a conspiracy between the defendant and a person within the personal jurisdiction of the court is not enough.
>
> . . . [T]he plaintiffs have made no attempts to show that there was a conspiracy.

(*Id.* at 7a, 8a)

Moreover, the "split of authority" relied on by Stauffachers involves the question of what is needed to allege a conspiracy in other contexts, such as when a prosecutor attempts to place a co-conspirator's statement into evidence. Even those cases agree that a bare allegation of conspiracy without either some factual support or some detail as to the basis for the allegation of conspiracy is insufficient. *See, e.g., First Chicago Int'l v. United Exchange Co.*, 836 F.2d 1375, 1378 (D.C. Cir. 1988) (bare allegation of conspiracy or agent is insufficient to establish personal jurisdiction); *Chrysler Corp. v. Fedders Corp.*, 643 F.2d 1229, 1237 (6th Cir.), *cert denied*, 454 U.S. 893 (1981) ("totally unsupported allegations of conspiracy cannot constitute sufficient contacts . . . to justify an exercise of personal jurisdiction. . . . ").

At some point, this Court may choose to address the issue of what is needed to support a conspiracy allegation for jurisdictional purposes. This case, however, is not the

proper vehicle, as nothing was offered in the courts below to supplement the allegations.[3]

III. FEDERAL SECURITIES LAW DOES NOT PROVIDE A STATUTORY BASIS FOR PERSONAL JURISDICTION.

In addition to alleging that Wisconsin law authorizes personal jurisdiction to be exercised over these defendants, Stauffachers (at least on appeal) have argued that federal racketeering and securities law also provide statutory grounds for the exercise of personal jurisdiction. The Seventh Circuit also rejected these arguments.

A. RICO Jurisdiction is Determined Under State Law Which in Wisconsin Would Not Bring Bennett or First Heritage Within the Court's Jurisdiction.

Although RICO authorizes *nationwide* service of process, it does not authorize service outside of the United States. 18 U.S.C. § 1965(b); *Lisak v. Mercantile Bancorp, Inc.*, 834 F.2d 668, 671-73 (7th Cir. 1987), *cert. denied*, 485 U.S. 1007 (1988). For international service of process, such as that involved in the present case, a RICO plaintiff must rely on a state's long-arm statute. *Brink's Mat Ltd. v. Diamond*, 906 F.2d 1519, 1521-23 (11th Cir. 1990). Because

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[3] Bennett and First Heritage do not concede that Stauffachers sufficiently alleged a conspiracy of RICO enterprise that would include them.

review of the exercise of personal jurisdiction under Wisconsin law has been discussed above, the court is referred to Sections I and II of this brief.

B. Personal Jurisdiction is not Supported by the Federal Securities Law.

On appeal to the Seventh Circuit, Stauffachers attempted to create personal jurisdiction under the Securities Exchange Act, 15 U.S.C. § 78aa. This provision has been interpreted to allow service of process on a defendant outside of the United States, *see, e.g., Securities & Exchange Comm'n v. International Swiss Investments Corp.*, 895 F.2d 1272, 1275 (9th Cir. 1990), but nothing in that statute changes the basic prerequisite of personal jurisdiction.

Though there is great doubt that the Stauffachers had ever properly raised securities law jurisdiction, nonetheless, the Seventh Circuit concluded that, in any event, the exercise of personal jurisdiction would not be proper because of a lack of sufficient contacts with the United States. It stated:

> Besides its trivial connection with Wisconsin, its only other contact with the United States is that a few of its depositors live across the national boundary from it, in the State of Washington. The totality of First Heritage's U.S. contacts is too sparse to bring it within the grasp of the U.S. courts.
>
> The suit was properly dismissed.

(Petition at 9a-10a)

The minimum contacts issue was discussed in Section II above, and need not be repeated here. The only new "contacts" relevant to securities law involve the fact that a few United States depositors have accounts with First Heritage. Neither the number or amount of these accounts was established below, nor is there any record as to other contacts with the United States. With respect to defendant Bennett, there were no additional contacts alleged.

There is no adequate factual basis which supports a further review. The jurisdictional issues were never pleaded or preserved for review. Grant of the Petition would therefore be inappropriate.

CONCLUSION

First Heritage and Bennett respectfully request that the Petition for Writ of Certiorari be denied.

Dated this 23rd day of November, 1992.

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